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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

MURJ, Inc., a Delaware Corporation,

Case No. 5:21-cv-00072-EJD

Plaintiff,

**SECOND AMENDED COMPLAINT FOR  
BREACH OF CONTRACT**

v.

RHYTHM MANAGEMENT GROUP, PLLC, a  
District of Columbia Limited Liability  
Company,

**JURY TRIAL DEMANDED**

Defendant.

1 Plaintiff Murj, Inc., by and through its undersigned counsel, brings this action against  
2 Rhythm Management Group, Inc., and alleges as follows:

3 **THE PARTIES**

4 1. Murj, Inc. (“Murj”) is a Delaware corporation with its principal place of business  
5 located at 3912 Portola Drive, Suite 10, Santa Cruz, California 95062.

6 2. Rhythm Management Group, PLLC (“Rhythm”) is a District of Columbia limited  
7 liability company with its principal place of business located at 1050 Connecticut Avenue NW,  
8 Suite 500, Washington, DC 20036.

9 **JURISDICTION**

10 3. Pursuant to a forum-selection clause contained in the Agreement at issue in this  
11 case, the Parties agreed that “[a]ny legal action relating to this Agreement will be brought in Santa  
12 Cruz, California, U.S.A., and the parties agree to the exercise of jurisdiction by a state or federal  
13 court in such counties.” Therefore, jurisdiction is appropriate in this case pursuant to that forum-  
14 selection clause.

15 4. This Court also has original subject-matter jurisdiction of this action under 28  
16 U.S.C. § 1332, in that it is a civil action between citizens of different states wherein the subject  
17 matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

18 5. Personal jurisdiction and venue are proper in this District pursuant to 28 U.S.C. §§  
19 1391(b)-(c) because the acts which form the basis of this action occurred within this District. The  
20 underlying contract was executed and to be performed in this District, and the Parties agreed that  
21 jurisdiction would reside in this district.

22 6. Personal jurisdiction and venue are also proper in this District pursuant to 28 U.S.C.  
23 §1391(a) based on the diversity of citizenship.

24 **INTRADISTRICT ASSIGNMENT**

25 7. The present action is subject to the Court’s Assignment Plan and not otherwise  
26 exempt under Local Rule 3-2(c). In accordance with Local Rule 3-2(e), the present action is subject  
27  
28

1 to assignment to the San Jose Division in light of the forum selection clause referenced above and  
 2 involving the County of Santa Cruz.

3 **GENERAL ALLEGATIONS**

4       8. Over the last several years, Murj has spent millions of dollars developing a  
 5 proprietary cardiac device data management software program, including the related  
 6 documentation, updates and enhancements (the “Murj Platform”).

7       9. The Murj Platform enables medical care providers to manage workflow of cardiac  
 8 implantable device data and care protocols. In doing so, the Murj Platform helps clinicians manage  
 9 data transmissions received from hundreds of different implantable cardiac devices manufactured  
 10 by numerous different companies. Innovative user interface designs, data calculations, data  
 11 displays, data management, and workflow innovations allow users to review the clinical data  
 12 contained within the transmissions.

13      10. The Murj Platform enables users to generate workflows and reports that fully  
 14 document the transmissions received from the foregoing implantable devices. Clinical  
 15 transmission reports are then routed to medical personnel for final review and approval.

16      11. Murj has taken significant steps to protect the Murj Program and its other trade  
 17 secrets. For example, it executes contracts to ensure that its partners do not appropriate the Murj  
 18 Platform, or any portion of it, for its own use. The Murj Platform is also protected by various types  
 19 of registered and issued Intellectual Property rights, demonstrating the novel aspects of the  
 20 program.

21      12. Rhythm is an independent diagnostic testing facility that sells and delivers clinical  
 22 diagnostic services to medical provider customers (“Clinics”). Rhythm works with its Clinics to  
 23 monitor, review and sign reports on patient-specific, summarized data.

24      13. In the middle of 2018, Rhythm discussed using the Murj Platform to sell and deliver  
 25 clinical diagnostic services to Rhythm customers (those customers being the medical providers  
 26 that review and approve the transmission reports, which would be completed by Rhythm using the  
 27 Murj Platform). After some discussions, Murj agreed to formalize its relationship with Rhythm,

1 whereupon Rhythm obtained from Murj a license to use the Murj Platform and become a Murj  
 2 customer.

3       14. On or about August 17, 2018, Murj and Rhythm executed a License Agreement  
 4 (“License Agreement I”), which included an agreement that Rhythm would abide by the Murj Inc.  
 5 License Agreement and Terms & Conditions (“Terms & Conditions”). On that same date, the  
 6 Parties executed a Sales Order (“Sales Order I”) for the Murj Remote Device Transmission  
 7 Management program. *See* License Agreement I, attached as **Exhibit 1**; Terms & Conditions,  
 8 attached as **Exhibit 2**; and Sales Order I, attached as **Exhibit 3**.

9       15. On January 15, 2019, Murj and Rhythm executed a License Agreement II (“License  
 10 Agreement II”) wherein Rhythm again agreed to abide by the Terms & Conditions. Rhythm also  
 11 executed Murj Sales Order II (“Sales Order II”) for Murj CIED Management Platform. *See* License  
 12 Agreement II, attached as **Exhibit 4**; Sales Order II, attached as **Exhibit 5** (The original License  
 13 Agreement, Terms & Conditions, and License Agreement II together referred to as the  
 14 “Agreement”).

15       16. The Agreement provides Rhythm with a license to use the Murj Platform in  
 16 connection with the diagnostic services it provides to its Clinics. Section 3.1 of the Terms &  
 17 Conditions states that “Murj grants [Rhythm] a Fee-bearing non-exclusive, non-transferable ...  
 18 non-sublicensable license to use the [Murj] Application for [Rhythm’s] internal business purposes,  
 19 which includes the internal business purposes of any subsidiaries that [Rhythm] controls either  
 20 directly or indirectly.”

21       17. In executing the Agreement, Rhythm agreed not to misappropriate the Murj  
 22 Platform, or otherwise take unfair advantage of its relationship with Murj.

23       18. In Section 3.4 of the Terms & Conditions, Rhythm agreed not to “cause or permit  
 24 the reverse engineering, disassembly, or decompilation of any portion of” the Murj Platform, nor  
 25 “distribute, sell, sublicense, rent, lease or use the [Murj Platform] (or any portion thereof) for time  
 26 sharing, hosting, service provider or similar purposes.”

27

28

1        19. In Section 3.5 of the Terms & Conditions, Rhythm agreed that “Murj and its  
2 licensors retain all rights, title and interest, including all intellectual property rights” in the Murj  
3 Platform.

4       20. Further, Section 6.2 of the License Agreement contains a confidentiality provision  
5 providing that the parties must hold each other's Confidential Information "in confidence and not  
6 to disclose such information in any form to any third party without the express written consent of  
7 the disclosing party, except employees and consultants performing services for the benefit of the  
8 receiving party who are under a written non-disclosure agreement." It further states that  
9 "Confidential Information shall remain the sole property of the disclosing party and its licensors."

10           21. Section 6.1 of the Terms & Conditions defines “Confidential Information” as  
11 (emphasis added):

13 (a) any information disclosed by either party to the other party, either directly or  
14 indirectly, in writing, orally or by inspection of tangible objects, including, without  
15 limitation, algorithms, business plans, customer data, customer lists, customer  
16 names, designs, documents, drawings, engineering information, financial analysis,  
17 forecasts, formulas, hardware configuration information, know-how, ideas,  
18 inventions, market information, marketing plans, processes, products, product  
plans, research, specifications, **Application**, source code, trade secrets, or any other  
information which is designated as “confidential,” “proprietary” or some similar  
designation and (b) any information otherwise obtained, directly or indirectly, by a  
receiving party through inspection, review or analysis of the materials described in  
cause (a) ...

\* \* \*

21        ... Confidential Information includes, without limitation, any Products, related  
22        documentation, specifications, pricing, disclosures in connection with Services and  
            the terms and conditions of this Agreement. Confidential information shall remain  
            the sole property of the disclosing party or its licensors.

24        22. The term “Application” was defined in Section 1.2 of the Agreement as “the  
25 software Application developed and delivered by Murj as described on a Sales Order.” Hence, the  
26 Murj Platform was specifically defined as “Confidential Information” under the Agreement.

1       23. Pursuant to the Agreement, Rhythm used the Murj Platform to enable its Clinics to  
 2 manage workflow of cardiac implantable device data and care protocols.

3       24. In mid-2020, during the term of the Agreement, Murj discovered that Rhythm had  
 4 used the Murj Platform and other Confidential Information to develop its own cardiac monitoring  
 5 platform called the Rhythm Synergy software platform (“Rhythm Platform”) for sharing, hosting,  
 6 service provider and/or similar purposes.

7       25. In mid-2020, Todd Butka, the CEO of Murj, spoke by phone to Rhythm CEO  
 8 Rhonda Brae and asked if it was true that Rhythm had built the Rhythm Platform. In response,  
 9 Ms. Brae denied that Rhythm was using the Rhythm Platform.

10      26. In mid-2020, Murj assisted Rhythm on the sale of Rhythm services to a Clinic.  
 11 During the sale process, Murj demonstrated the Murj Platform to Rhythm to incorporate into the  
 12 sales pitch. Rhythm subsequently won the account. Several months later, Murj discovered that  
 13 Rhythm supplied the Clinic with its own Rhythm Platform, and not the Murj Platform as discussed  
 14 among the parties.

15      27. The Rhythm Platform is described in detail at  
 16 <https://www.linkedin.com/company/rhythm-management-group-llc/videos/> (last accessed  
 17 January 5, 2021).

18      28. A key feature of the Murj Platform is the daily monitoring and triaging of  
 19 customizable alerts.

20      29. Rhythm claims that its Rhythm Platform provides daily monitoring and triaging of  
 21 customizable alerts.

22      30. The Murj Platform includes its 2 Click Clear service that uniquely provides for the  
 23 reviewing and processing of multiple transmissions from various sources in just two clicks.

24      31. The Rhythm Platform claims to also provide for the reviewing and processing of  
 25 multiple transmissions from various sources. In doing so, Rhythm claims that the Rhythm Platform  
 26 allows one to monitor a number of cardiac devices from a single location using a single login,  
 27 “reviewing and approving multiple reports in just a few clicks.”

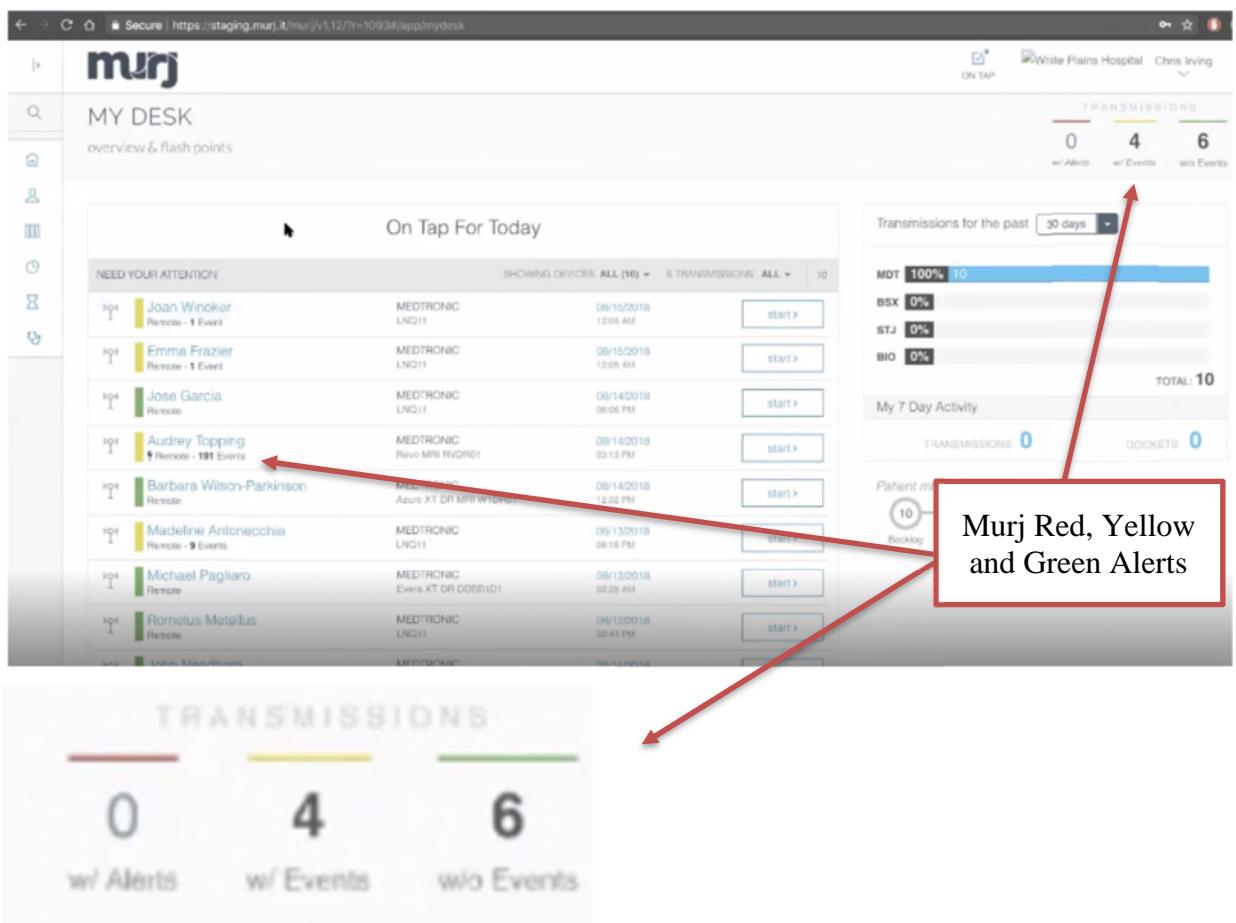
1       32. The Murj Platform allows its customers to collect revenue from remote professional  
 2 fees without the headache of having to setup and manage remote monitoring themselves.

3       33. Rhythm claims that its Rhythm Platform also allows its customers to collect  
 4 revenue from remote professional fees without the headache of having to setup and manage remote  
 5 monitoring themselves.

6       34. The Rhythm Platform incorporates significant other elements from the Murj  
 7 Platform. For example, the user interface, the wording on its website, the layout, the design, and  
 8 the phrases contained on the Rhythm Platform are all copies of the Murj Platform.

9       35. The “My Agenda” screen of the Rhythm Platform is a clear copy of the Murj  
 10 Platform’s “My Desktop” screen, including the presentation of the alerts, the items that “need  
 11 attention,” and the three red, yellow and green alert signals. *See* comparison below.

12       Murj “My Desktop” screen:

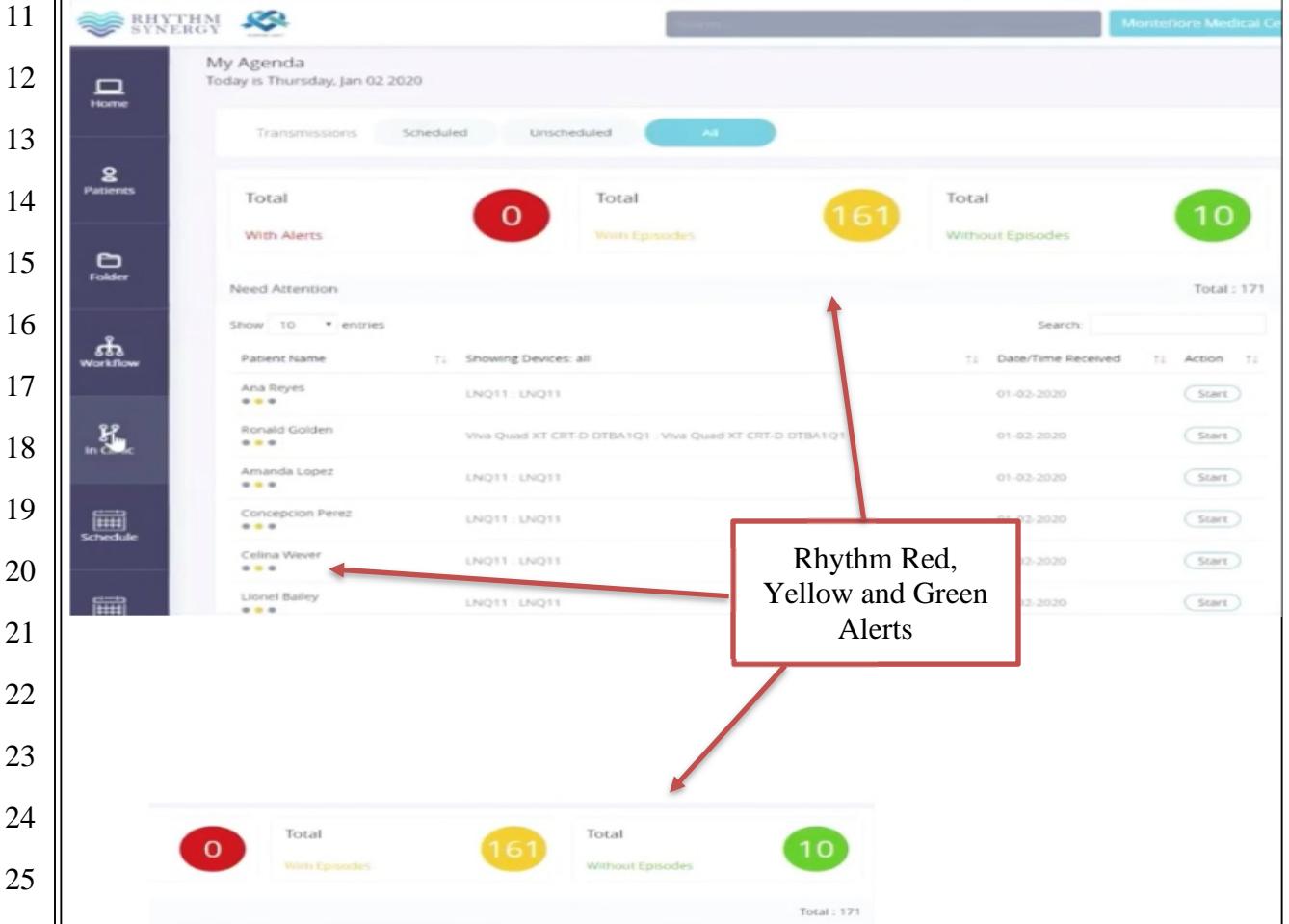


1 Murj Red, Yellow  
2 and Green Alerts

3 On Tap For Today

4 NEED YOUR ATTENTION				SHOWING DEVICES ALL (10) ▾	& TRANSMISSIONS ALL ▾	10
5	104	Joan Winoker Remote - 1 Event	MEDTRONIC LNQ11	08/15/2018 12:05 AM		<a href="#">start &gt;</a>
6	104	Emma Frazier Remote - 1 Event	MEDTRONIC LNQ11	08/15/2018 12:05 AM		<a href="#">start &gt;</a>
7	104	Jose Garcia Remote	MEDTRONIC LNQ11	08/14/2018 06:06 PM		<a href="#">start &gt;</a>
8	104	Audrey Topping Remote - 191 Events	MEDTRONIC Revo MRI RVDR01	08/14/2018 03:13 PM		<a href="#">start &gt;</a>

10 Rhythm "My Agenda" screen:



Need Attention			Total : 11
	Patient Name	Showing Devices: all	Search:
1	Ana Reyes	LNQ11 - LNQ11	01-02-2020
2	Ronald Golden	Viva Quad XT CRT-D DTBA1Q1 Viva Quad XT CRT-D DTBA1Q1	01-02-2020
3	Armando Lopez	LNQ11 - LNQ11	01-02-2020
4			

Rhythm Red,  
Yellow and Green  
Alerts

5        36.      The Rhythm Platform includes the same web page label, the same colors and alert  
6 labelling, the same column structure, the same “need attention” categories, the same device labels,  
7 the same transmision colors, and even the same “start” button. *See* comparisons above and below.

8        37.      The similarities of the display, layout, presentation and naming conventions  
9 between the Murj Platform and the Rhythm Platform are numerous. For example, the Rhythm  
10 Platform displays “work overview” pages with the same graphical user interface and the same  
11 naming conventions as the Murj Platform. Murj often refers to the columns as “swim lanes” which  
12 can be modified for a user to select their designed workflow processing steps and requirements.  
13 The pages have columns with similar naming and functionality, similar color indicators, and an  
14 overall similar user interface presentation. *See* comparison below.

15        Murj Platform “Workflow Overview” screen with patients organized into “backlog,”  
16 “compose,” “needs approval,” and “cleared” categories:  
17

The screenshot shows a "WORKFLOW OVERVIEW" page with the following sections:

- Backlog:** Contains patient records for Schley Sears, Kathleen Moore, Ralph McGuire, Brenda Eaves, George Wade, and Kenneth Jackson, each with a "RECEIVED" date and a "STJ: ICD" status.
- Compose:** Contains a list of patients: Daryl Thompson, Marvin Kiesler, Linda Parks, Betty Turner, Doris Ballard, Darlene Stoeckle, Joyce Perry, Robert Edwards, Denver Shuman, Raymond Combs, Nellie Gray, and Densil Hollen, each with a "OWNER" name and a "MDT: IPG" status.
- Needs Approval:** Contains a list of patients: Joyce Perry, Robert Edwards, Denver Shuman, Raymond Combs, Nellie Gray, and Densil Hollen, each with a "OWNER" name and a "MDT: ILR" status.
- Cleared:** Contains a list of patients: MILLARD BEATTY, SUSAN BLACK, FAYETTA SWINEY, CARLEAN SMITH, LAMONT JONES, and MARY UZZLE, each with an "APPROVED BY" status (e.g., "Johan Asato DO", "Craig McCotter MD") and a "close" button.

1 Rhythm “Workflow Overview” screen with patients organized in “to be done,” “in  
 2 progress,” “needs approval,” and “cleared” categories:

3

4 Workflow Overview

5

To be Done	In Process	Needs Approval	Cleared
Idred Scott Idred Scott Iria MRI Quad CRTD DTMA1DQ Delivered 19-12-27 00:00:00	Jessie Dunne Jessie Dunne: Cleria MRI CRTD DTMA1D1 OWNER JENNY LINDINGER	James Bailey James Bailey Azure XT DR MRI W1DR01 OWNER JENNY LINDINGER	Mary Jenkins Mary Jenkins Evera MRI XT DR D00M1D4 Approved by BRUCE ZINNMEISTER Billing Code: 93294, Diagnosis Code: Z95.81
Stephen Jalon Stephen Jalon DR1 Delivered 19-12-29 00:00:00			Michael Lent Michael Lent ADDRL1 Approved by BRUCE ZINNMEISTER Billing Code: 93294, Diagnosis Code: Z45.01
ward Hooper ward Hooper Iria MRI CRTD DTMA1D1 Delivered 20-01-01 00:00:00			Dolly Turner Dolly Turner

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12 38. When reviewing a patient transmission, the Rhythm Platform “current  
 13 Transmission” view duplicates many features and innovations found in the Murj Platform “Patient  
 14 View”, including: (i) the ability to document and track the number of transmissions ready for  
 15 review; (ii) the Murj innovation for organizing and processing multiple transmissions, (iii) the  
 16 calendar view at the top of the screen; and (iv) the calendar view that performs the same billing  
 17 insight. See comparison below.

18 Murj Platform “Patient View” screen:

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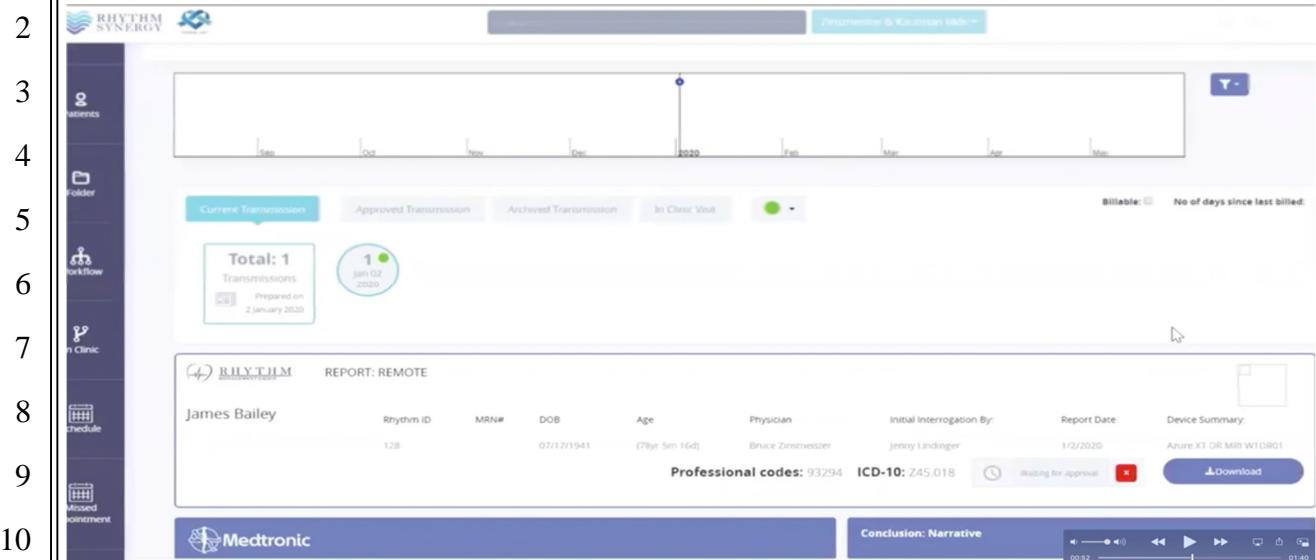
26

27

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The screenshot shows the Murj Platform's "Patient View" interface. At the top, there's a navigation bar with "All", "Search...", "ON TAP", "Murj Admin", and tabs for "IOC", "TRANSMISSIONS", and "RM NEEDS DOCKET". Below this is a horizontal timeline with months "APR" and "MAY" and a "DOCKET LIST" section showing "1 IN PROGRESS". A "Transmission Overview" section displays "8 transmissions" from May 11, 2020, to May 11, 2020. One transmission is highlighted in blue. A "PDF: Initial Interrogation Report" for a Medtronic device is shown, with a "Full Report" link. The report includes fields like "Medtronic", "Reveal LINQ™ + TruRhythm™", "Patient: [REDACTED]", "Received: 11-May-2020 13:59:57", "Date of Birth: [REDACTED]", "ID: [REDACTED]", "Follow-up Physician: [REDACTED]", "Battery: OK", "Phone: 8622135182", "Reason for Monitoring: Suspected AF", and "Date of Implant: 14-Mar-2019". A "History" section is also visible.

1                   Rhythm Platform patient view screen:



11                 39. There are numerous other similarities between the Murj Platform and the Rhythm  
 12 Platform. For example, the Rhythm “Synergy” page includes a copy of a variety of unique features  
 13 of the Murj website, including copies of the timeline layout, custom color severity, archived  
 14 transmission indicator, transmission number and colors, workflow layout, transmission count,  
 15 remote report, needs approval status screen, cancel button, and download button. The two  
 16 platforms otherwise share similar words, phrases, aesthetics, features and functionality, and other  
 17 characteristics.

18                 40. It is clear that Rhythm used the Murj Platform and other Confidential Information  
 19 that it derived from Murj to create its own program to directly replace use of the Murj Platform  
 20 and compete against Murj. Hence, it did exactly what it explicitly agreed not to do in the  
 21 Agreement.

22                 41. In doing so, Rhythm had access to the Murj Platform, had access to the services  
 23 provided by Murj, had access to Murj’s Confidential Information and, with the knowledge and  
 24 benefit of these products, services and information, created its competing Rhythm Platform. As a  
 25 result, it now offers a remote cardiac monitoring application that looks and functions like the Murj  
 26 Platform, but without being obligated to pay for the Murj Platform.

1       42. It was contemplated that Murj would provide its platform to Rhythm to use with its  
2 customers. Under that arrangement, both companies would share in the profits generated by the  
3 Murj Platform and accompanying services provided to those customers. However, Rhythm instead  
4 used Murj's Confidential Information to develop the Rhythm Platform, cut Murj out of these  
5 business relationships, and capture all of the profits contemplated from those relationships for  
6 itself. In doing so, it appropriated all of the benefits of the Murj Platform without paying the  
7 exorbitant costs associated with the research and development of the Murj Platform.

8           43. This behavior was in contravention of the very purpose of Sections 1.1, 3.1, 3.4,  
9 3.5, 6.1, and 6.2 of the Agreement, which was to ensure that Rhythm would play fair and not  
10 wrongfully appropriate the money, time, and hard work associated with developing the Murj  
11 Platform.

12           44. On July 1, 2020, Murj sent Rhythm a letter informing it of its breach of the  
13 Agreement, and requesting that it cease and desist making, using, marketing, selling, offering for  
14 sale, or promoting its Rhythm Platform. Rhythm never responded to this letter.

15        45. On August 3, 2020, Murj sent a follow up letter to Rhythm, again requesting that it  
16 cease and desist from its wrongful activity. Rhythm provided no response to this letter.

17        46. Upon information and belief, Rhythm is continuing to offer its Rhythm Platform as  
18 a service to its Clinics, despite having received the foregoing communications.

## **FIRST CLAIM FOR RELIEF**

## **Breach of Written Contract**

21           47. Murj repeats the allegations in the preceding paragraphs as though fully set forth  
22 herein.

23        48. Murj and Rhythm executed License Agreement I and License Agreement II and, in  
24 doing so, agreed to the Terms & Conditions.

25           49.     Murj and Rhythm also executed Sales Order I and Sales Order II relating to the  
26 Murj Platform.

27 50. The Agreement is a legally binding agreement between the parties.

1       51. Pursuant to the terms of the Agreement, Murj provided the Murj Platform, along  
 2 with a license to the Murj Platform, to Rhythm.

3       52. Murj otherwise abided by all of the terms of the Agreement.

4       53. The Murj Platform is specifically defined as “Confidential Information” under  
 5 Section 6.1 of the Terms & Conditions of the Agreement.

6       54. Rhythm materially breached the Agreement by, *inter alia*, failing to hold Murj’s  
 7 Confidential Information in confidence and creating the Rhythm Platform in violation of the  
 8 Agreement, as described herein.

9       55. Section 6.2 of the Terms & Conditions of the Agreement states that the  
 10 “Confidential Information shall remain the sole property of the disclosing party and its licensors,”  
 11 that “[t]he parties agree, both during the term of this Agreement and for a period of five (5) years  
 12 [] after its termination, to hold each other’s Confidential Information in confidence and not to  
 13 disclose such information in any form to any third party without the express consent of the  
 14 disclosing party,” and that each party “agrees to take all reasonable steps to ensure that  
 15 Confidential Information is not disclosed or distributed by its employees or agents in violation of  
 16 this Agreement.” Rhythm breached these provisions of the Agreement by using the Murj Platform  
 17 to create the Rhythm Platform, by incorporating portions of the Murj Platform into the Rhythm  
 18 Platform, by failing to hold the Murj Platform in confidence, by disclosing portions of the Murj  
 19 Platform to its customers and other third-parties without permission, and by failing to take  
 20 reasonable steps to ensure that the Murj Platform and other Confidential Information is not  
 21 disclosed or distributed by its employees. In doing so, Rhythm violated Murj’s exclusive rights to  
 22 the Confidential Information in violation of Section 6.2 of the Terms & Conditions.

23       56. Section 3.4 of the Terms & Conditions of the Agreement states that Rhythm “shall  
 24 not … knowingly distribute, sell, sublicense, rent, lease or use the [Murj Platform] (or any portion  
 25 thereof) for time sharing, hosting, service provider, or similar purposes.” Rhythm breached this  
 26 term of the Agreement by using the Murj Platform to create the Rhythm Platform to be used for  
 27 time sharing, hosting, service provide or similar purposes. In doing so, it copied words, phrases,  
 28

1 aesthetics, features, functionality, and other portions of the Murj Platform to create the Rhythm  
2 Platform, as described elsewhere in this Complaint. Rhythm then sold, licensed, rented or leased  
3 the Rhythm Platform to third parties to be used for time sharing, hosting, service provider and  
4 similar services in violation of this provision. Those copies included numerous features and  
5 functionalities unique to the Murj Platform, which were confidential to Murj.

6        57. Section 3.5 of the Terms & Conditions of the Agreement states that “Murj and its  
7 licensors retain all rights, title and interest, including all intellectual property rights” in the Murj  
8 Platform. Rhythm breached this provision of the Agreement by using the Murj Platform, including  
9 Confidential Information and other intellectual property rights of Murj, to create the Rhythm  
10 Platform in violation of Murj’s sole right, title and interest in its Murj Platform and Confidential  
11 Information.

12        58. Section 3.4 of the Terms & Conditions of the Agreement state that Rhythm shall  
13 not “cause or permit the reverse engineering, disassembly, or decompilation of” the Murj Platform.  
14 Rhythm breached the Agreement by examining in detail the Murj Platform for the purposes of  
15 creating a competing platform, therefore effectively reverse engineering the platform. Rhythm  
16 undertook the process of analyzing the Murj Platform to identify the system’s components and  
17 their interrelationships, to understand the basic working principle and structure of the system, and  
18 to create representations of the system in another form for the purpose of creating the competing  
19 Rhythm Platform. Upon information and belief, Rhythm used the Murj Platform provided under  
20 the Agreement to recover the design, requirement specifications and/or functions of the Murj  
21 Platform, enabling Rhythm to obtain a head start in creating the competing Rhythm Platform.

### Damages

23        59. As a direct and proximate result of Rhythm's breach of the Agreement, Murj has  
24 suffered damages in an amount necessary to put it into a position that it would have been had the  
25 breaches not occurred. These damages are direct damages and can be calculated in various ways.

26       60. Defendant effectively assumed an unrestricted license to the Confidential  
27 Information and, therefore, Murj has suffered damages in an amount equal to the value of the

- 1 Confidential Information, which may be measured by the costs associated with developing the
- 2 Confidential Information that was appropriated by Rhythm.

3       61.     Murj has also suffered damages equal to the amount of the unjust enrichment of  
4 benefits received by Rhythm using the Murj Platform and other Confidential Information, and/or  
5 reasonable royalties associated with the use of Murj's Confidential Information, including those  
6 derived from the Rhythm Platform, and therefore is entitled to disgorgement of the same.

7        62. Murj has suffered damages in an amount equal to the lost profits incurred because  
8 of Rhythm's use of the Confidential Information, the reverse engineering of its Murj Platform, and  
9 other breaches of the Agreement. Such lost profits include those relating to customers that would  
10 have used the Murj Platform but for the Rhythm Platform and Rhythm's breaches. The lost profits  
11 associated with these customers is a direct loss incurred by Murj as a result of Rhythm's breach,  
12 and they are precisely what Murj bargained for and, therefore, are recoverable to help put Murj in  
13 the same position it would have occupied had the contract been performed by Rhythm.

14        63. Murj has also suffered damages because the annual lost revenue associated with the  
15 customers appropriated by Rhythm using the Rhythm Platform has resulted in a depressed market  
16 value of Murj as a company. Therefore, Rhythm would be alternatively liable for the market value  
17 of Murj before the breach versus the value of Murj after the breach. Such damages would restore  
18 Murj to the position it would be in had Murj not breached the Agreement.

19       64. The Agreement, including its provisions relating to Confidential Information, is of  
20 the nature that Rhythm should have contemplated the fact that the foregoing losses would have  
21 been the probable result of breaching the Agreement as described herein.

22        65. Rhythm's breach of the Agreement was a substantial factor in causing Murj's  
23 damages.

## **Request for Specific Performance**

25        66.      Murj and Rhythm entered a specifically enforceable contract that is sufficiently  
26 certain in its terms; namely, Murj and Rhythm entered into the Agreement which provided Rhythm  
27 with a license to the Murj Platform and in return Rhythm agreed that the Murj Platform constitutes

1 “Confidential Information” and shall remain the sole property of Murj, that it will hold that  
2 program in confidence, that it will not cause or permit reverse engineering, disassembly or  
3 decompilation of the Murj Platform, that it will not distribute, sell, sublicense, rent, lease or use  
4 any portion of the Murj Platform, and that it will not use the Murj Platform for service provider or  
5 other purposes.

67. Murj and Rhythm both provided adequate consideration under the Agreement.

7 68. Murj has performed all of its obligations and covenants under the Agreement.

8            69. Rhythm has breached the Agreement.

9 ||| 70. Murj has no adequate remedy at law.

10        71. Murj prays the Court for an order and adjudge that Rhythm must specifically  
11 perform all of its obligations under the Agreement including those set forth in Sections 3.1, 3.4,  
12 6.1 and 6.2 of the Agreement.

## **Request for Permanent Injunction**

14        72. Murj is informed and believes and thereon alleges that an actual controversy exists  
15 between Murj and Rhythm relative to the Agreement.

16       73.     Murj prays that the Court adjudicate the rights, interests, duties, and obligations of  
17 Murj and Rhythm under the Agreement, and Murj specifically prays that the Court determine that  
18 Rhythm breached the Agreement and continues to breach those provisions of the Agreement that  
19 survived its termination.

20       74. In conjunction therewith, Murj requests that this Court issue permanent injunctive  
21 relief, which prohibits Rhythm from continuing to breach the Agreement by making, marketing,  
22 selling, offering for sale, or using the Rhythm Platform.

## **PRAYER FOR RELIEF**

24 WHEREFORE, Murj, Inc. requests that this Court enter judgment in its favor and against  
25 Rhythm Management Group, Inc. on all claims as follows:

A. For damages in an amount to be determined at trial;

B. For the issuance of an injunction preventing the defendant from using its Murj Platform or otherwise further breaching the terms of the Agreement;

C. For an order awarding Plaintiff its attorney fees and costs pursuant to Section 12.5 of the Terms & Conditions portion of the Agreement;

5 D. For an order compelling the Defendant to specifically perform under the  
6 Agreement;

7           E.     For a declaration of Plaintiff and Defendant's respective rights, duties, interests,  
8 and obligations; and

9 F. For any other relief this Court deems just and proper.

## JURY DEMAND

Murj demands a trial by jury on all claims and issues so triable.

Dated: December 8, 2021

POLSINELLI LLP

By: /s/ Colby B. Springer  
COLBY B. SPRINGER

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